

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	MDL NO. 1456
LITIGATION)	Civil Action No. 01-12257-PBS
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)	
) Judge Patti B. Saris	
THIS DOCUMENT RELATES TO:)	
)	
<i>The City of New York v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 04-CV-06054))	
<i>County of Suffolk v. Abbott Labs., et al.</i>)	
(E.D.N.Y. No. CV-03-229))	
<i>County of Westchester v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 03-CV-6178))	
<i>County of Rockland v. Abbott Labs., et al.</i>)	
(S.D.N.Y. No. 03-CV-7055))	
<i>County of Putnam v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-04740))	
<i>County of Dutchess v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-06458))	
<i>County of Putnam v. Abbott Labs, et al.</i>)	
(S.D.N.Y. No. 05-CV-04740))	
<i>County of Washington v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00408))	
<i>County of Rensselaer v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00422))	
<i>County of Albany v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00425))	
<i>County of Warren v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00468))	
<i>County of Greene v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00474))	
<i>County of Saratoga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00478))	
<i>County of Columbia v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00867))	
<i>Essex County v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00878))	
<i>County of Chenango v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00354))	
<i>County of Broome v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00456))	
<i>County of Onondaga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00088))	
<i>County of Tompkins v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00397))	
<i>County of Cayuga v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00423))	
<i>County of Madison v. Abbott Labs, et al.</i>)	
(N.D.N.Y. No. 05-CV-00714))	
<i>County of Cortland v. Abbott Labs, et al.</i>)	

(N.D.N.Y. No. 05-CV-00881))
County of Herkimer v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00415))
County of Oneida v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00489))
County of Fulton v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00519))
County of St. Lawrence v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00479))
County of Jefferson v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00715))
County of Lewis v. Abbott Labs, et al.)
(N.D.N.Y. No. 05-CV-00839))
County of Chautauqua v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06204))
County of Allegany v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06231))
County of Cattaraugus v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06242))
County of Genesee v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06206))
County of Wayne v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06138))
County of Monroe v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06148))
County of Yates v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06172))
County of Niagara v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06296))
County of Seneca v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06370))
County of Orleans v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06371))
County of Ontario v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06373))
County of Schuyler v. Abbott Labs, et al.)
(W.D.N.Y. No. 05-CV-06387))
County of Chemung v. Abbott Lab, et al.)
(W.D.N.Y. No. 05-CV-06744))
County of Nassau v. Abbott Labs, et al.)
(E.D.N.Y. No. 04-CV-5126))
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**AVENTIS PHARMACEUTICALS' INDIVIDUAL REPLY MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS (1) THE CONSOLIDATED COMPLAINT OF
NEW YORK CITY AND PLAINTIFF NEW YORK COUNTIES OTHER THAN
NASSAU AND (2) THE SECOND AMENDED COMPLAINT OF NASSAU COUNTY**

Defendant Aventis Pharmaceuticals ("Aventis") respectfully submits this Reply Memorandum in support of the Joint Defendants' Motion to Dismiss (1) the consolidated

complaint of New York City and plaintiff New York counties other than Nassau and (2) the Second Amended Complaint of Nassau County (the “Complaints”). Plaintiffs’ Opposition states that the Court’s ruling in *Suffolk II* dismissed Plaintiff’s § 145-b AWP claims against “certain defendants only.” Opposition at 4, naming companies in footnote 4, not including Aventis. Plaintiffs also allege that the Court held that “for all defendants but the Suffolk 13 +6, Suffolk had satisfied Rule 9 (b).” Opposition at 9, including Aventis as one of the defendants for which Suffolk had supposedly satisfied Rule 9 (b). Finally, Plaintiffs claim that the Court in *Suffolk II* refused to dismiss “AWP claims under Section 145-b and Section 349 against those defendants as to whom Suffolk has alleged both the published AWP for a drug and what Suffolk believes is an accurate estimate of the actual wholesale price of that drug.” Opposition at 22 (internal quotations omitted), including Aventis at footnote 24.

Aventis files this brief solely to clarify the above assertions by Plaintiffs. Contrary to Plaintiffs’ assertions, *all* claims against Aventis were dismissed with prejudice by the Court in *Suffolk II*, for “failure to plead a drug sold by Aventis Pharmaceuticals Inc., as opposed to Aventis Behring L.L.C.” *Suffolk II* at *3.

Accordingly, Suffolk has no pending claims against Aventis. Additionally, for the reasons stated in the Joint Memorandum in Support of Defendants’ Motion to Dismiss and the Joint Defendants’ Reply Memorandum, as well as the reasons stated in the Separate Memorandum and Reply of Merck & Co., Inc, Aventis respectfully requests that the claims against it in the Consolidated County Complaint and Nassau County’s Second Amended Complaint be dismissed with prejudice.

Dated: May 11, 2006

Respectfully submitted,

/s/ Jennifer H. McGee

Jennifer H. McGee
SHOOK, HARDY & BACON L.L.P.
Hamilton Square
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
Telephone: (202) 783-8400
Facsimile: (202) 783-4211

Michael L. Koon
Joseph A. Matye
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd
Kansas City, MO 64105
Telephone: (816) 474-6550
Facsimile: (861) 421-5547

Michael DeMarco (BBO #1199690)
Jeanne E. Demers (BBO #561255)
KIRKPATRICK & LOCKHART LLP
75 State Street
Boston, MA 02109
Telephone: (617) 951-9111
Facsimile: (617) 261-3175

ATTORNEYS FOR AVENTIS
PHARMACEUTICALS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served, this 11th day of May, 2006, to all counsel of record by electronic service pursuant to Case Management Order No. 2, by sending a copy of this document to LexisNexis for posting and notification to all parties.

/s/ Jennifer H. McGee
Jennifer H. McGee